

OFFICE COPY

Prepared By _____

Approved By _____

An act to amend Sections 12301.03, 12301.05, 12309.1, and 14132.97 of the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 12301.03 of the Welfare and Institutions Code is amended to read:

12301.03. (a) (1) ~~Notwithstanding~~ The Legislature finds and declares as follows:

(A) Authorized hours under the In-Home Supportive Services program were reduced in the 1992–93 fiscal year, and a supplemental assessment process was implemented to ensure that recipients remained safely in their homes.

(B) The reduction in authorized hours as provided for in Chapter 8 of the Statutes of 2011 includes a supplemental assessment process, to similarly ensure that recipients remain safely in their homes.

(2) Notwithstanding any other provision of law, if the Department of Finance determines that a reduction in authorized hours of service is necessary, pursuant to subdivision (d) of Section 14132.957, the department shall implement a reduction in authorized hours of service to each in-home supportive services recipient as specified in this section, which shall be applied to the recipient's hours as authorized pursuant to his or her most recent assessment.

~~(2)~~

(3) The reduction required by this section shall not preclude any reassessment to which a recipient would otherwise be entitled. However, hours authorized pursuant to a reassessment shall be subject to the reduction required by this section.

~~(3)~~

(4) For those recipients who have a documented unmet need, excluding protective supervision, because of the limitations contained in Section 12303.4, this reduction

shall be applied first to the unmet need before being applied to the authorized hours. If the recipient believes he or she will be at serious risk of out-of-home placement as a consequence of the reduction, the recipient may apply for a restoration of the reduction of authorized service hours, pursuant to Section 12301.05.

(4)

(5) A recipient of services under this article may direct the manner in which the reduction of hours is applied to the recipient's previously authorized services.

~~(b) The department shall work with the counties to develop a process to allow for counties to preapprove IHSS Care Supplements described in Section 12301.05, to the extent that the process is permissible under federal law. The preapproval process shall be subject to the following conditions:~~

~~(1) The preapproval process shall rely on the criteria for assessing IHSS Supplemental Care applications, developed pursuant to Section 12301.05.~~

~~(2) Preapproval shall be granted only to individuals who would otherwise be granted a full restoration of their hours pursuant to Section 12301.05.~~

~~(3) With respect to existing recipients as of the effective date of this section, all efforts shall be made to ensure that counties complete the process on or before a specific date, as determined by the department, in consultation with counties in order to allow for the production, printing, and mailing of notices to be issued to remaining recipients who are not granted preapproval and who thereby are subject to the reduction pursuant to this section.~~

~~(4) The department shall work with counties to determine how to apply a preapproval process with respect to new applicants to the IHSS program who apply after the effective date of this section.~~

(6) The reduction in service hours made pursuant to paragraph (2) shall not apply to in-home supportive services recipients who also receive services under Section 9560, subdivision (t) of Section 14132, and Section 14132.99.

~~(e)~~

~~(b) The notice of action informing each recipient who is not preapproved for an IHSS Care Supplement pursuant to subdivision (b) whose hours are reduced pursuant to paragraph (2) of subdivision (a) shall be mailed at least 15 days prior to the reduction going into effect. The notice of action shall be understandable to the recipient and translated into all languages spoken by a substantial number of the public served by the In-Home Supportive Services program, in accordance with Section 7295.2 of the Government Code. The notice shall not contain any recipient financial or confidential identifying information other than the recipient's name, address, and Case Management Information and Payroll System (CMIPS) client identification number, and shall include, but not be limited to, all of the following information:~~

~~(1) The aggregate number of authorized hours before the reduction pursuant to paragraph (2) of subdivision (a) and the aggregate number of authorized hours after the reduction.~~

~~(2) That the recipient may direct the manner in which the reduction of authorized hours is applied to the recipient's previously authorized services.~~

(3) How all or part of the reduction may be restored, as set forth in Section 12301.05, if the recipient believes he or she will be at serious risk of out-of-home placement as a consequence of the reduction.

~~(d)~~

(c) The department shall inform providers of any reduction to recipient hours through a statement on provider timesheets, after consultation with counties.

~~(e)~~

(d) The IHSS Care Supplement application process described in Section 12301.05 shall be completed before a request for a state hearing is submitted. If the IHSS Care Supplement application is filed within 15 days of the notice of action required by subdivision ~~(e)~~ (b), or before the effective date of the reduction, the recipient shall be eligible for aid paid pending. A revised notice of action shall be issued by the county following evaluation of the IHSS Care Supplement application.

(e) If the Director of Health Care Services determines that federal approval is necessary to implement this section, this section shall be implemented only after any state plan amendments required pursuant to Section 14132.95 are received.

(f) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through all-county letters or similar instruction from the department until regulations are adopted. The department shall adopt emergency regulations implementing this section no later than October 1, 2013. The department may readopt any emergency

regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations implementing this section and the one readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

(g) This section shall become operative on the first day of the first month following 90 days after the effective date of ~~the act that added this section~~ Chapter 8 of the Statutes of 2011, or October 1, 2012, whichever is later.

SEC. 2. Section 12301.05 of the Welfare and Institutions Code is amended to read:

12301.05. (a) Any aged, blind, or disabled individual who is eligible for services under this chapter who receives a notice of action indicating that his or her services will be reduced under subdivision (a) of Section 12301.03 but who believes he or she is at serious risk of out-of-home placement unless all or part of the reduction is restored may submit an IHSS Care Supplement application. When a recipient submits an IHSS Care Supplement application within 15 days of receiving the reduction notice or prior

to the implementation of the reduction, the recipient's in-home supportive services shall continue at the level authorized by the most recent assessment, prior to any reduction, until the county finds that the recipient does or does not require restoration of any hours through the IHSS Care Supplement. If the recipient disagrees with the county's determination concerning the need for the IHSS Care Supplement, the recipient may request a hearing on that determination.

(b) The department shall develop an assessment tool, in consultation with stakeholders, to be used by the counties to determine if a recipient is at serious risk of out-of-home placement as a consequence of the reduction of services pursuant to section 12301.03. The assessment tool shall be developed utilizing standard of care criteria for relevant out-of-home placements that serve individuals who are aged, blind, or who have disabilities and who would qualify for IHSS if living at home, including, but not limited to, criteria set forth in Chapter 7.0 of the Manual of Criteria for Medi-Cal Authorization published by the State Department of Health Care Services, as amended April 15, 2004, and the IHSS uniform assessment guidelines.

(c) Counties shall give a high priority to prompt screening of persons specified in this section to determine their need for an IHSS Care Supplement.

(d) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through all-county letters or similar instruction from the department until regulations are adopted. The department shall adopt emergency regulations implementing this section no later than October 1, 2013. The department may readopt

any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations implementing this section and the one readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State, and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

~~(e) If the Director of Health Care Services determines that federal approval is needed to implement this section, this section shall not be implemented until after any state plan amendments, pursuant to Section 14132.95, are received.~~

~~(f)~~

(e) This section shall become operative on the first day of the first month following 90 days after the effective date of ~~the act that added this section~~ Chapter 8 of the Statutes of 2011, or October 1, 2012, whichever is later.

SEC. 3. Section 12309.1 of the Welfare and Institutions Code is amended to read:

12309.1. (a) As a condition of receiving services under this article, or Section 14132.95 or 14132.952, an applicant for or recipient of services shall obtain a

certification from a licensed health care professional, including, but not limited to, a physician, physician assistant, regional center clinician or clinician supervisor, occupational therapist, physical therapist, psychiatrist, psychologist, optometrist, ~~ophthalmologist~~ ophthalmologist, or public health nurse, declaring that the applicant or recipient is unable to perform some activities of daily living independently, and that without services to assist him or her with activities of daily living, the applicant or recipient is at risk of placement in out-of-home care.

(1) For purposes of this section, a licensed health care professional means an individual licensed in California by the appropriate California regulatory agency, acting within the scope of his or her license or certificate as defined in the Business and Professions Code.

(2) ~~Except as provided in subparagraph (A) or (B) or subdivision (c), the~~ The certification shall be received prior to service authorization, and services shall not be authorized in the absence of the certification.

~~(A) Services~~ certification. However, services may be authorized prior to receipt of the certification when the services have been requested on behalf of an individual being discharged from a hospital or nursing home and services are needed to enable the individual to return safely to their home or into the community. Services also may be provided based upon alternative documentation in accordance with subdivision (c).

~~(B) Services may be authorized prior to receipt of the certification when the deterioration of the recipient's health or mental health is likely to result in eviction from home, homelessness, or a hazardous living environment.~~

(3) The county shall consider the certification as one indicator of the need for in-home supportive services, but the certification shall not be the sole determining factor.

(4) The health care professional's certification shall include, at a minimum, both of the following:

(A) A statement by the professional, as defined in subdivision (a), that the individual is unable to independently perform one or more activities of daily living, and that one or more of the services available under the IHSS program is recommended for the applicant or recipient, in order to prevent the need for out-of-home care.

(B) A description of any condition or functional limitation that has resulted in, or contributed to, the applicant's or recipient's need for assistance.

(b) The department, in consultation with the State Department of Health Care Services and with stakeholders, including, but not limited to, representatives of program recipients, providers, and counties, shall develop a standard certification form for use in all counties that includes, but is not limited to, all of the conditions in paragraph (4) of subdivision (a). The form shall include a description of the In-Home Supportive Services program and the services the program can provide when authorized after a social worker's assessment of eligibility. The form shall not, however, require health care professionals to certify the applicant's or recipient's need for each individual service.

(c) The department, in consultation with the State Department of Health Care Services and stakeholders, as defined in subdivision (b), shall identify alternative documentation that shall be accepted by counties to meet the requirements of this

section, including, but not limited to, hospital or nursing facility discharge plans, minimum data set forms, individual program plans, or other documentation that contains the necessary information, consistent with the requirements specified in subdivision (a).

(d) The department shall develop a letter for use by counties to inform recipients of the requirements of subdivision (a). The letter shall be understandable to the recipient, and shall be translated into all languages spoken by a substantial number of the public served by the In-Home Supportive Services program, in accordance with Section 7295.2 of the Government Code.

(e) This section shall not apply to a recipient who is receiving services in accordance with this article or Section 14132.95 or 14132.952 on the operative date of this section until the date of the recipient's first reassessment following the operative date of this section, as provided in subdivision (f).

(1) The recipient shall be notified of the certification requirement before or at the time of the reassessment, and shall submit the certification within 45 days following the reassessment in order to continue to be authorized for receipt of services.

(2) A county may extend the 45-day period for a recipient to submit the medical certification on a case-by-case basis, if the county determines that good cause for the delay exists.

(f) This section shall become operative on the first day of the first month following 90 days after the effective date of ~~the act that added this section~~ Chapter 8 of the Statutes of 2011, or July 1, 2011, whichever is later.

(g) The State Department of Health Care Services shall provide notice to all Medi-Cal managed care plans, directing the plans to assess all Medi-Cal recipients applying for or receiving in-home supportive services, in order to make the certifications required by this section.

(h) If the Director of Health Care Services determines that a Medicaid State Plan amendment is necessary to implement subdivision (b) of Section 14132.95, this section shall not be implemented until federal approval is received.

SEC. 4. Section 14132.97 of the Welfare and Institutions Code is amended to read:

14132.97. (a) (1) For purposes of this section, “waiver personal care services” means personal care services authorized by the department for persons who are eligible for either nursing or model nursing facility waiver services.

(2) Waiver personal care services shall satisfy all of the following criteria:

(A) The services shall be defined in the nursing and model nursing facility waivers.

(B) The services shall differ in scope from services that may be authorized under Section 14132.95 or 14132.952.

(C) The services shall not replace any hours of services authorized or that may be authorized under Section 14132.95 or 14132.952.

~~(D) The services shall not replace any hours of service reduced under Sections 12301.03 and 12301.06, or any other state law that reduces hours of service under Section 14132.95 or 14132.952.~~

(b) An individual may receive waiver personal care services if all of the following conditions are met:

(1) The individual has been approved by the department to receive services in accordance with a waiver approved under Section 1915(c) of the federal Social Security Act (42 U.S.C. Sec. 1396n(c)) for persons who would otherwise require care in a nursing facility.

(2) The individual has doctor's orders that specify that he or she requires waiver personal care services in order to remain in his or her own home.

(3) The individual chooses, either personally or through a substitute decisionmaker who is recognized under state law for purposes of giving consent for medical treatment, to receive waiver personal care services, as well as medically necessary skilled nursing services, in order to remain in his or her own home.

(4) The waiver personal care services and all other waiver services for the individual do not result in costs that exceed the fiscal limit established under the waiver.

(c) The department shall notify the administrator of the in-home supportive services program in the county of residence of any individual who meets all requirements of subdivision (b) and has been authorized by the department to receive waiver personal care services. The county of residence shall then do the following:

(1) Inform the department of the services that the individual is authorized to receive under Section 14132.95 or 14132.952 at the time he or she becomes eligible for waiver personal care services.

(2) Determine the individual's eligibility for services under Section 14132.95 or 14132.952 if he or she is not currently authorized to receive those services and if he or she has not been previously determined eligible for those services.

(3) Implement the department's authorization for waiver personal care services for the individual at the quantity and scope authorized by the department.

(d) (1) Waiver personal care services approved by the department for individuals who meet the requirements of subdivision (b) may be provided in either of the following ways, or a combination of both:

(A) By a licensed and certified home health agency participating in the Medi-Cal program.

(B) By one or more providers of personal care services under Article 7 (commencing with Section 12300) of Chapter 3 and subdivision (d) of Section 14132.95, when the individual elects, in writing, to utilize these service providers.

(2) The department shall approve waiver personal care services for individuals who meet the requirements of subdivision (b) only when the department finds that the individual's receipt of waiver personal care services is necessary in order to enable the individual to be maintained safely in his or her own home and community.

(3) When waiver personal care services are provided by a licensed and certified home health agency, the home health agency shall receive payment in the manner by which it would receive payment for any other service approved by the department.

(4) When waiver personal care services are provided by one or more providers of personal care services under Article 7 (commencing with Section 12300) of Chapter 3 and subdivision (d) of Section 14132.95, the providers shall receive payment on a

schedule and in a manner by which providers of personal care services receive payment. The State Department of Social Services shall commence making payments for waiver personal care services when its payment system has been modified to accommodate those payments. No county shall be obligated to administer waiver personal care services until the State Department of Social Services payment system has been modified to accommodate those payments. However, any county or public authority or nonprofit consortium that administers the in-home supportive services program and personal care services program may pay providers for the delivery of waiver personal care services if it chooses to do so. In such a case, the county, public authority, or nonprofit consortium shall be reimbursed by the department for the waiver personal care services authorized by the department and provided to an individual upon submittal of documentation as required by the waiver, and in accordance with the requirements of the department.

(e) Waiver personal care services shall not count as alternative resources in a county's determination of the amount of services an individual may receive under Section 14132.95 or 14132.952.

(f) Any administrative costs to the State Department of Social Services, a county, or a public authority or nonprofit consortium associated with implementing this section shall be considered administrative costs under the waiver and shall be reimbursed by the department.

(g) Two hundred fifty thousand dollars (\$250,000) is appropriated from the General Fund to the State Department of Social Services for the 1998–99 fiscal year

for the purpose of making changes to the case management, information, and payrolling system that are necessary for the implementation of this section.

(h) This section shall not be implemented until the department has obtained federal approval of any necessary amendments to the existing nursing facility and model nursing facility waivers and the state plan under Title 19 of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.). Any amendments to the existing nursing facility and model nursing facility waivers and the state plan which are deemed to be necessary by the director shall be submitted to the federal Health Care Financing Administration by April 1, 1999.

(i) The department shall implement this section only to the extent that its implementation results in fiscal neutrality, as required under the terms of the waivers.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make changes necessary for implementation of the Budget Act of 2011, it is necessary for this act to take effect immediately.

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Prepared By _____

Approved By _____

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: In-home supportive services.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which, either through employment by the recipient, or by or through contract by the county, qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Counties are responsible for the administration of the IHSS program. Under the Medi-Cal program, similar services are provided to eligible individuals, with these services known as personal care option services. Under existing law, operative as specified, if the Department of Finance makes a specified determination, the State Department of Social Services is required to implement a reduction in authorized IHSS program service hours, in accordance with prescribed procedures. Existing law authorizes an individual who believes that he or she is at

serious risk of out-of-home placement, unless all or part of the reduction is restored, to apply for an IHSS Care Supplement to restore the reduced hours.

This bill would recast and revise the provisions relating to the IHSS service hours reduction and IHSS Care Supplement, including exempting certain IHSS recipients, who also receive other designated public health and social services, from the service hour reduction. The bill would delete provisions requiring the State Department of Social Services to develop a preapproval process for the care supplement. The bill would make other technical and conforming changes to these provisions.

This bill would revise the definition of “waiver personal care services” received by certain recipients under the Medi-Cal program, to delete the requirement prohibiting waiver personal care services from replacing any hours of services authorized or reduced pursuant to other designated service categories.

Existing law requires an IHSS applicant or recipient to obtain a certification from a licensed health care professional, as specified, as a condition of receiving those services. Existing law authorizes the receipt of services prior to certification under certain circumstances, including when deterioration of the recipient’s health or mental health is likely to result in eviction, homelessness, or a hazardous living environment.

This bill would revise the circumstances under which services may be authorized prior to receipt of certification, to delete the authority described above, and to expressly authorize provision of services based upon specified alternative documentation.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.